



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TRG
Docket No: 7078-98
23 February 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED],
[REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former commissioned officer in the United States Marine Corps Reserve filed enclosure (1) with this Board requesting that he be credited with additional retirement points and transferred to the Retired Reserve vice being discharged on 30 June 1993.

2. The Board, consisting of Mr. Leeman, Mr. Ivins and Mr. Neuschafer, reviewed Petitioner's allegations of error and injustice on 15 February 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. At the end of his anniversary year on 4 April 1992 Petitioner had accumulated 17 years of qualifying service for reserve retirement. In the next anniversary year he has only been credited with 15 membership points. In a letter dated 24 May 1993, Headquarters Marine Corps (HQMC) informed him that since he was a LTCOL (O-5) with 26 years of commissioned service who had twice failed of selection, his retirement or discharge was required. He was also informed that if he had 18 qualifying years for retirement he could be placed in a "safety zone" to

complete 20 qualifying years. HQMC did not receive any response and Petitioner was honorably discharged on 30 June 1993.

d. Petitioner states in his application that he never received the 24 May 1993 letter from HQMC and did not learn of his discharge from the Marine Corps Reserve until he completed his assignments as a Foreign Service Officer with the American Embassies in Islamabad, Pakistan and Rabat, Morocco. He states that while in Islamabad, he submitted biographies of prominent political and military figures at the request of the Department of Defense and, accordingly, he should have received 36 retirement points in the anniversary year ending 4 April 1993. He states he did not participate in the anniversary year ending 4 April 1994 because he was in language training. While in Rabat, he submitted research papers on political questions concerning Morocco and was told he would be credited with 36 points in the anniversary years ending 4 April 1995 and 1996.

c. Petitioner has submitted copies of approved Equivalent Instruction Reports (EIR's), which show that they were received and approved by the Mobilization Training Unit. In a letter dated 30 June 1998, the Officer in Charge of the HQMC Intelligence IMA Detachment stated that Petitioner EIR's and his intelligence assessments were still on file, and that he should be credited with qualifying years in 1993, 1995 and 1996.

d. Attached to enclosure (2) are advisory opinions from HQMC. The first opinion recommends that his request be denied because his discharge was proper and further service was not authorized. Subsequently, HQMC responded to a request from the Board concerning the crediting of retirement points. HQMC stated that the retirement points could not be administratively credited because the documentation did not have the proper authorizing signature. In addition, this opinion points that he could not be administratively credited with retirement points after his discharge.

e, In his rebuttal to the advisory opinion, Petitioner's reiterates that he thought he had 18 qualifying years and that he had completed the last two years while in Morocco. He has submitted a letter from the Operational Sponsor in HQMC which states that after the files were reviewed and found to be genuine and accurate, it was recommended that Petitioner be credited with 36 retirement points in 1993, 1995 and 1996.

CONCLUSION:

Upon review and consideration of all the evidence of record the

Board concludes that Petitioner's request warrants favorable action. The Board finds that Petitioner did earn 36 retirement points in the three years at issue and he should be credited with those points. Therefore, the Board concludes that Petitioner should be credited with 36 retirement points and 15 membership points in the anniversary year ending 4 April 1993. Had this action been taken prior to discharge, he would have been credited with 18 qualifying years and have been placed in the safety zone. Therefore, the discharge of 30 June 1993 is improper and should be canceled. With the cancellation of the discharge, he can and should be credited with the 36 retirement points in the anniversary years ending 4 April 1995 and 1996. Finally, the record should be corrected to show that he transferred to the Retired Reserve on 1 May 1996 with eligibility for retired pay at age 60.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand his status in the Retired Reserve.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by canceling the discharge of 30 June 1993 and crediting him with 36 retirement points in the anniversary years ending 4 April 1993, 1995 and 1996.

b. That Petitioner's naval record be further corrected to show that he transferred to the Retired Reserve on 1 May 1996 with eligibility for retired pay at age 60.

c. That this Report of Proceedings be filed in Petitioner's naval record.


4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter;

ROBERT D. ZSALMAN
Recorder


ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the

authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director